

(3) *Reasons:* The reasons for asserting these exemptions are to ensure the integrity of the Inspector General process within the Agency. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Also, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through Inspector General channels for fear of retribution or harassment.

(d) *System identification and name:* LDIA 0275, DoD Hotline Referrals.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k) (2) and (5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority:* 5 U.S.C. 552a(k) (2) and (5).

(3) *Reason:* The reasons for asserting these exemptions are to ensure that informants can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of their identity. The execution of this function requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the case. These records are privileged Director, DIA, documents and information contained therein is not routinely released or disclosed to anyone.

(e) *System identification and name:* LDIA 0660, Security Files.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k) (2) and (5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority:* 5 U.S.C. 552a(k) (2) and (5).

(3) *Reason:* The reasons for asserting these exemptions are to ensure the integrity of the adjudication process used by the Agency to determine the suit-

ability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear or retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters.

(f) *System identification and name:* LDIA 0800, Operation Record System.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k) (2) and (5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority:* 5 U.S.C. 552a(k) (2) and (5).

(3) *Reason:* The reasons for asserting these exemptions are to ensure the integrity of ongoing foreign intelligence collection and/or training activities conducted by the Defense Intelligence Agency and the Department of Defense. The execution of these functions requires that information in response to national level intelligence requirements be provided in a free and open manner without fear of retribution or unauthorized disclosure. Disclosures from this system can jeopardize sensitive sources and methodology.

[56 FR 56595, Nov. 6, 1991]

## PART 320—NATIONAL IMAGERY AND MAPPING AGENCY (NIMA) PRIVACY PROGRAM

Sec.

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- 320.9 Fees.
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AUTHORITY: Pub. L. 93-579, 88 Stat. 1986 (5 U.S.C. 552a).

SOURCE: 40 FR 55543, Nov. 28, 1975, unless otherwise noted. Redesignated at 57 FR 6074, Feb. 20, 1992.

### § 320.1 Purpose and scope.

(a) This regulation is published pursuant to the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 5 U.S.C. 552a (hereinafter the "Privacy Act"). This regulation:

(1) Establishes or advises of procedures whereby an individual can:

(i) Request notification of whether the National Imagery and Mapping Agency (NIMA) maintains or has disclosed a record pertaining to him in any nonexempt system of records,

(ii) Request a copy or other access to such a record or to an accounting of its disclosure,

(iii) Request that the record be amended and

(iv) Appeal any initial adverse determination of any such request;

(2) Specifies those systems of records which the Director, Headquarters NIMA has determined to be exempt from the procedures established by this regulation and from certain provisions of the Privacy Act. NIMA policy encompasses the safeguarding of individual privacy from any misuse of NIMA records and the provision of the fullest access practicable to individuals to NIMA records concerning them.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65020, Dec. 10, 1997]

### § 320.2 Definitions.

As used in this part:

*Individual* means a natural person who is a citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor have the same rights as the individual and may act on behalf of the individual.

*Maintain* means to collect, use or disseminate records on individuals.

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*Record* means any item, collection or grouping of information about an individual that is maintained by the NIMA or a Component thereof, including, but not limited to, his education, financial transactions, medical history and criminal or employment history and that contains his name or the identifying number, symbol or other identifying particulars assigned to the individual such as a finger or voice print or a photograph.

*System of records* means a group of any records under the control of the NIMA or a Component thereof from which information is retrieved by the name of an individual or by some identifying number or symbol or other identifying particular assigned to the individual.

*Routine use* means (with respect to the disclosure of a record), the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses but also all the proper and necessary uses of the record even if such use occurs infrequently.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65020, Dec. 10, 1997]

### § 320.3 Procedures for requests for information pertaining to individual records in a record system.

(a) Upon request in person or by mail any individual, as defined in § 320.2, shall be informed whether or not any NIMA system of records contains a record pertaining to him.

(b) Any individual requesting such information in person may present himself at NIMA General Counsel Office (refer to the NIMA address list at paragraph (e) of this section) or at the NIMA officer thought to maintain the record in question and shall provide:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) Acceptable identification to verify the individual's identity, e.g., driver's license, employee identification card or medicare card.

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(c) Any individual requesting such information by mail shall address his request to the Director, Defense Mapping Agency, or to the Office of the General Counsel (refer to paragraph (e) of this section) or NIMA office thought to maintain the record in question and shall include in such request the following:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) A notarized statement or unsworn declaration in accordance with 28 U.S.C. 1746 to verify his identity, if, in the opinion of the NIMA custodian of the record, the sensitivity of the material involved warrants.

(d) NIMA Procedures on Requests for Information. Upon receipt of a request for information made in accordance with these regulations, notice of the existence or nonexistence of any records described in such requests will be furnished to the requesting party within ten working days of receipt.

(e) NIMA General Counsel address list.

(1) NIMA Fairfax, Attn: GC, Mail Stop A-7 NIMA Fairfax, 8613 Lee Highway, Fairfax, VA 22031-2137.

(2) NIMA Bethesda, Attn: GCM, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(3) NIMA St. Louis, Attn: GCM Mail Stop L-32, 3200 South Second Street, St. Louis, MO 63118-3399.

(4) NIMA Navy Yard, Attn: GCM Stop, N-24, Building 213, Washington, DC 20505-0001.

(5) NIMA Westfields, Attn: GCM, Room 13F20C, 14675 Lee Road, Chantilly, VA 20151-1715.

[40 FR 55543, Nov. 28, 1975. Redesignated and amended at 57 FR 6074, Feb. 20, 1992; 60 FR 7908, Feb. 10, 1995; 62 FR 65020, Dec. 10, 1997]

### § 320.4 Disclosure of requested information to individuals.

(a) Upon request by an individual made in accordance with the procedures set forth in this section, such individual shall be granted access to any record pertaining to him which is contained in a nonexempt NIMA system of records. However, nothing in this sec-

tion shall allow an individual access to any information compiled by NIMA in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a NIMA record pertaining to him in person or by mail.

(1) Any individual making such request in person shall present himself at Office of General Counsel (refer to § 320.3(e) for address list) or at the NIMA office thought to maintain such record and shall provide identification to verify the individuals' identity, e.g., driver's license, employee identification card, or medicare card.

(2) Any individual making a request for access to records by mail shall address such request to the General Counsel (refer to § 320.3(e) for address list) or to the NIMA officer thought to maintain the record in question, and shall include therein a signed, notarized statement to verify his identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his own choosing while reviewing the record requested. If an individual elects to be so accompanied he shall give notice of such election in his request and shall provide a written statement authorizing disclosure of the record in the presence of the accompanying person. Failure to so notify NIMA in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *NIMA determination of requests for access.* (1) Upon receipt of a request made in accordance with this section, the NIMA Office of the General Counsel or NIMA office having responsibility for maintenance of the record in question shall release the record, or refer it to an Initial Denial Authority, who shall:

(i) Determine whether or not such request shall be granted.

(ii) Make such determination and provide notification within 30 working days after receipt of such request.

(iii) Notify the individual that fees for reproducing copies of records will be assessed and should be remitted before the copies may be delivered. Fee schedule and rules for assessing fees are contained in § 320.9.

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(iv) Requests for access to personal records may be denied only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel.

(2) If access to a record is denied because such information has been compiled by NIMA in reasonable anticipation of a civil or criminal action or proceeding, the individual will be notified of such determination and his right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making the request shall notify the NIMA whether the records requested are to be copied and mailed to him.

(2) If the records are to be made available for personal inspection the individual shall arrange for a mutually agreeable time and place for inspection of the record. The NIMA reserves the right to require the presence of a NIMA officer or employee during personal inspection of any record pursuant to this section and to request of the individual that he provide a signed acknowledgment of the fact that access to the record in question was granted him by the NIMA.

[40 FR 55543, Nov. 28, 1975. Redesignated and amended at 57 FR 6074, Feb. 20, 1992; 62 FR 65020, 65021, Dec. 10, 1997]

## § 320.5 Request for correction or amendment to record.

(a) Any individual may request amendment of a record pertaining to him in accordance with the following procedure.

(b) After inspection of a record pertaining to him an individual may file a request in writing with the NIMA Office of General Counsel or NIMA office having responsibility for maintenance of the record in question for amendment of a record. Such requests shall specify the particular portions of the record to be amended, the desired amendments and the reasons, supported by documentary proof, if available, therefor.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65021, Dec. 10, 1997]

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### § 320.6 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the NIMA Office of General Counsel, or NIMA office having responsibility for maintenance of the record in question shall make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction or process the request for refusal.

(b) Refusals of requests for amendment of a record will be made only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel. The refusal letter will inform the individual by certified mail, return receipt requested, of refusal to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to the Director, NIMA, in accordance with § 320.7.

(c) Any person or other agency to whom the record has been previously disclosed shall be informed of any correction or notation of dispute with respect to such records.

(d) These provisions for amending records are not intended to permit the alteration of evidence previously presented during any administrative or quasi-judicial proceeding, such as an employee grievance case. Any changes in such records should be made only through the established procedures for such cases. Further, these provisions are not designed to permit collateral attack upon what has already been the subject of an administrative or quasi-judicial action. For example, an individual may not use this procedure to challenge the final decision on a grievance, but the individual would be able to challenge the fact that such action has been incorrectly recorded in his file.

[40 FR 55543, Nov. 28, 1975. Redesignated and amended at 57 FR 6074, Feb. 20, 1992; 62 FR 65021, Dec. 10, 1997]

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### § 320.7 Appeal of initial adverse agency determination on correction or amendment.

(a) An individual whose request for amendment of a record pertaining to him may further request a review of such determination in accordance with this section.

(b) Not later than 30 working days following receipt of notification of refusal to amend, an individual may file an appeal of such decision with the Director, NIMA. The appeal shall be in writing, mailed or delivered to NIMA, Attn: Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003. The appeal shall identify the records involved, shall indicate the dates of the request and adverse determination and shall indicate the express basis for that determination. In addition, the letter of appeal shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) Upon appeal from a denial to amend a record the Director, NIMA, or his designee shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than 10 working days after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(1) The Director or his designee shall also notify the individual of the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(g)(1A)) regarding judicial review of his determination.

(2) If on appeal the refusal to amend the record is upheld, the individual shall be permitted to file a statement setting forth the reasons for his disagreement with the Director's determination and such statement shall be appended to the record in question.

(d) The Director or his designee may extend up to 30 days the time period prescribed above within which to make a determination on an appeal from refusal to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed time period.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65021, Dec. 10, 1997]

### § 320.8 Disclosure of record to person other than the individual to whom it pertains.

(a) Subject to the conditions hereinafter set forth, no officer or employee of the NIMA will disclose any record which is contained in a system of records, by any means of communication to any person or other agency who is not an individual to whom the record pertains.

(b) Any such record may be disclosed to any person or other agency only upon written request or with prior written consent of the individual to whom the record pertains.

(c) In the absence of a written consent from the individual to whom the record pertains, such record may be disclosed only provided such disclosure is:

(1) To those officers and employees of the DoD who have a need for the record in the performance of their duties.

(2) Required under the Freedom of Information Act.

(3) For a routine use as defined in appendix C to 32 CFR part 310 of this chapter.

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the U.S. Code.

(5) To a recipient who has provided the NIMA with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and the record is transferred in a form that is not individually identifiable and will not be used to make any decisions about the rights, benefits or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity authorized by law,

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provided the head of the agency or instrumentality has made a prior written request to the Director, NIMA specifying the particular record and the law enforcement activity for which it is sought.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(9) To either house of Congress, and, to the extent of the matter within its jurisdiction, any committee or subcommittee or joint committee of Congress.

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the GAO.

(11) Under an order of a court of competent jurisdiction.

(d) Except for disclosures made pursuant to paragraphs (c) (1) and (2) of this section, an accurate accounting will be kept of the data, nature and purpose of each disclosure of a record to any person or agency, and the name and address of the person or agency to whom the disclosure was made. The accounting of disclosures will be made available for review by the subject of a record at his request except for disclosures made pursuant to paragraph (c)(7) of this section. If an accounting of disclosure has been made, any person or agency contained therein will be informed of any correction or notation of dispute made pursuant to § 320.6.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65021, Dec. 10, 1997]

### § 320.9 Fees.

(a) The following services are available with respect to requests made under the provisions of this part for which fees will be charged as provided in paragraphs (b) and (c) of this section.

(1) Copying of records/documents.

(2) Certification of copies of records/documents.

(b) The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted, at the individual's request, by registered, cer-

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tified, air or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

### (1) Schedule of fees:

#### General fees:

Minimum fee, per request plus .....	\$2.00
Forms, per copy .....	.05
Publication, per printed page .....	.01
Microfiche, per fiche .....	.06
Reports, per printed page .....	.05

(Examples: Cost of 20 forms, \$3.00; cost of a printed publication with 100 pages, \$3.00; cost of a microfiche publication consisting of 10 fiche, \$2.60).

#### Office copy reproduction (when shelf stock is not available):

Minimum charge up to six reproduced pages .....	2.00
Minimum charge, first fiche .....	5.00
Each additional page .....	.05
Each additional fiche .....	.10

#### Other issuances:

Minimum charge up to six pages .....	2.00
Each additional page .....	.05

Certification and validation of documents with the DMA seal .....	2.00
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### (2) Rules relating to charging fees:

(i) Fees may be charged to an individual only for the making of copies when requested by the individual. When copies are made by the NIMA as a necessary incident to granting access to a record, a fee may not be charged.

(ii) The individual may not be charged for time spent in searching for requested records or for time spent in reviewing records to determine if they fall within the disclosure requirements of the Act.

(iii) The fee charged may not exceed the direct cost of making the copy.

(3) Certification and validation with the NIMA seal of documents will be available at \$2.00 for each certification.

(c) Fees charged for the above services are payable in advance by check, or money order payable to the Treasurer of the United States.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65021, Dec. 10, 1997]

### § 320.10 Penalties.

The Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) makes it a misdemeanor subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. The Act also establishes similar penalties for violations by NIMA employees of the

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Act or regulations established thereunder.

[40 FR 55543, Nov. 28, 1975. Redesignated at 57 FR 6074, Feb. 20, 1992, as amended at 62 FR 65021, Dec. 10, 1997]

### § 320.11 Specific exemptions.

All systems of records maintained by the NIMA and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

[60 FR 7909, Feb. 10, 1995, as amended at 61 FR 2916, Jan. 30, 1996; 62 FR 65021, Dec. 10, 1997]

## PART 321—DEFENSE INVESTIGATIVE SERVICE, PRIVACY ACT OF 1974

Sec.

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321.5 Requirements for identification.

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321.8 Request for correction or amendment.

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321.10 Appeal of initial amendment decision.

321.11 Disclosure to other than subject.

321.12 Fees.

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321.14 Exemptions.

321.15 DIS implementation policies.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 40 FR 55546, Nov. 28, 1975, unless otherwise noted. Redesignated at 56 FR 55631, Oct. 29, 1991.

### § 321.1 Purpose and applicability.

(a) This part establishes rules, policies and procedures for the disclosure of personal records in the custody of the Defense Investigative Service (DIS) to the individual subjects, the handling

of requests for amendment or correction of such records, appeal and review of DIS decisions on these matters, and the application of general and specific exemptions, under the provisions of the Privacy Act of 1974. It also prescribes other policies and procedures to effect compliance with the Privacy Act of 1974 and DoD Directive 5400.11.

(b) The procedures set forth in this part do not apply to DIS personnel seeking access to records pertaining to themselves which previously have been available. DIS personnel will continue to be granted ready access to their personnel, security, and other records by making arrangements directly with the maintaining office. DIS personnel should contact the Office of Information and Legal Affairs for access to investigatory records pertaining to themselves or any assistance in obtaining access to other records pertaining to themselves, and may follow the procedures outlined in these rules in any case.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35640, July 10, 1981. Redesignated at 56 FR 55631, Oct. 29, 1991]

### § 321.2 References.

(a) Pub. L. 93-579 (5 U.S.C. 552a) the Privacy Act of 1974.

(b) DoD Directive 5400.11, Personal Privacy and Rights of Individuals Regarding Their Personal Records, dated 4 August 1975.

(c) DIS Regulation 28-4, "Access to and Maintenance of DIS Personal Records".

(d) DoD Directive 5400.7, DoD Freedom of Information Program.

(e) Office of Management and Budget Guidelines for Implementation of the Privacy Act of 1974, dated 1 July 1975.

(f) DIS Manual for Personnel Security Investigations.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35640, July 10, 1981. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 57 FR 33124, July 27, 1992]

### § 321.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.